

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE APRIL 9, 2012
AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 956

Introduced by Senator Lieu
(Coauthors: Assembly Members Alejo and Wieckowski)

January 9, 2012

An act to add Chapter 1b (commencing with Section 18500) to Division 8 of the Business and Professions Code, and to amend Section 22054 of the Financial Code, relating to automobile sellers and lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 956, as amended, Lieu. Buy-here-pay-here automobile sellers and lenders.

(1) Existing law prohibits a person from acting as a dealer in vehicles, as specified, without a license issued by the Department of Motor Vehicles. Existing law governs conditional—~~sales~~ *sale* contracts, as defined, for the purchase of motor vehicles, including the enforceability of those contracts. Existing law also governs lease contracts, as defined, for the lease of motor vehicles, including the enforceability of those contracts. Existing law, the California Finance Lenders Law, the violation of which is a crime, provides for the licensure and regulation of finance lenders by the Commissioner of Corporations, but exempts from its provisions a bona fide conditional contract of sale involving the disposition of personal property when that form of agreement is not used for the purpose of evading provisions of that law.

This bill would enact the Buy-Here-Pay-Here Automobile Dealers Act. The bill would ~~identify~~ *define* a “buy-here-pay-here automobile

dealer” as a ~~person~~ *seller* who ~~is required to obtain a license from the Department of Motor Vehicles to act as a dealer in vehicles and who also enters into a specified number of conditional-sales~~ *sale* contracts, as defined, or lease contracts, as defined, ~~within a certain time period~~ *does not routinely assign those contracts to an unaffiliated third-party finance or leasing source, and collects payments on or otherwise services those contracts*. This bill would require those dealers to obtain a finance lender license and subject them to specified other provisions of the California Finance Lenders Law. The bill would also define a “buyer-borrower” as a person who enters into a conditional-sales *sale* contract or lease contract with a buy-here-pay-here automobile dealer.

This bill would govern the terms and conditions of contracts entered into by a buy-here-pay-here automobile dealer and the rights of the parties, including, but not limited to, requiring a notice to a buyer-borrower of specified rights under the contract.

(2) Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies, as defined, and their employees by the Bureau of Security and Investigative Services within the Department of Consumer Affairs.

This bill would impose additional requirements on a buy-here-pay-here automobile dealer seeking to repossess a vehicle, including, but not limited to, prohibiting a dealer from commencing repossession proceedings due to failure to make a scheduled loan payment prior to the 11th day following the day on which that payment was due, requiring a dealer to hire a licensed repossession agency to repossess the vehicle on the dealer’s behalf, and prohibiting the dealer from charging the buyer-borrower a fee exceeding \$500 for the dealer’s costs in connection with the repossession. The bill would also establish a cap on interest rates that could be charged under a conditional-sales *sale* or lease contract and require a buy-here-pay-here automobile dealer to allow a buyer-borrower 45 days to repay any penalties, fees, and other charges imposed by the dealer on the buyer-borrower in connection with past due payments that have been brought current.

(3) The bill would require that any additional costs to the Department of Corporations in administering the provisions of the bill be borne by buy-here-pay-here automobile dealers through fees charged by the department.

(4) Because this bill would expand the scope of a crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1b (commencing with Section 18500) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 1b. BUY-HERE-PAY-HERE AUTOMOBILE DEALERS
ACT

18500. This chapter shall be known, and may be cited, as the Buy-Here-Pay-Here Automobile Dealers Act.

18501. As used in this chapter:

(a) “Dealer of vehicles” is one within the meaning of Section 11701 of the Vehicle Code, subject to the provisions of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(b) “~~Conditional-sales~~ *sale* contract” is one within the meaning of subdivision (a) of Section 2981 of the Civil Code, subject to the provisions of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code.

(c) “Lease contract” is one within the meaning of subdivision (d) of Section 2985.7 of the Civil Code, subject to the provisions of Chapter 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) “Buyer-borrower” means a person who enters into a ~~conditional-sales~~ *sale* contract or lease contract with a buy-here-pay-here automobile dealer.

(e) “Licensed repossession agency” means a “repossession agency” as defined in Section 7500.2 that is licensed pursuant to the Collateral Recovery Act (Chapter 11 (commencing with Section 7500) of Division 3).

~~18502. (a) On or before January 31, 2013, and annually thereafter, every dealer of vehicles that entered into one or more conditional sales contracts or lease contracts during the preceding calendar year shall calculate the percentage of those contracts entered into during that year that the dealer assigned or sold to an unaffiliated third party within 30 days of consummation.~~

~~(b) Any dealer of vehicles that commenced business during a calendar year and that entered into conditional sales contracts or lease contracts for less than one full calendar year as of December 31st of the year in which it commenced business shall calculate the percentage of those contracts that were assigned or sold to unaffiliated third parties within 30 days of their consummation, based on the number of months during which that dealer of vehicles engaged in business during that calendar year, but shall in no event base its calculation on fewer than three full calendar months of data. A dealer meeting the criteria of subdivision (d) shall perform annual calculations in accordance with subdivision (a) in subsequent years.~~

~~(c) Any dealer of vehicles that has less than three full calendar months of data with which to calculate a percentage of assigned contracts pursuant to this section shall perform the required calculation as soon as possible after acquiring three full calendar months of data, and annually thereafter on or before January 31st of each year.~~

~~(d) A dealer of vehicles that assigns fewer than 90 percent of all conditional sales contracts and lease contracts to unaffiliated third parties within 30 days of the consummation of those contracts, as calculated pursuant to subdivision (a), (b), or (c), as applicable, shall be deemed to be a “buy-here-pay-here automobile dealer.”~~

~~18502. “Buy-here-pay-here automobile dealer” means a seller who does all of the following:~~

~~(a) Enters into conditional sale or lease contracts.~~

~~(b) Does not routinely assign the conditional sale contracts or lease contracts to an unaffiliated third-party finance or leasing source.~~

~~(c) Collects payments on or otherwise services conditional sale contracts or lease contracts.~~

~~18503. (a) Notwithstanding Section 22054 of the Financial Code or any other law, and except as otherwise expressly provided in this chapter, a buy-here-pay-here automobile dealer may shall~~

1 not do business in California unless licensed by the Department
2 of Corporations pursuant to the California Finance Lenders Law
3 (Division 9 (commencing with Section 22000) of the Financial
4 Code).

5 (b) A dealer of vehicles shall obtain a California Finance
6 Lenders Law license no later than six months following the date
7 on which it meets the definition of a buy-here-pay-here *automobile*
8 dealer, pursuant to the calculations required under Section 18502.

9 18504. (a) Notwithstanding Section 18502 or any other law,
10 a buy-here-pay-here automobile dealer shall be exempt from the
11 provisions of Sections 22320, 22320.5, and 22330 of the Financial
12 Code.

13 (b) Notwithstanding Section 22250 of the Financial Code, a
14 conditional-~~sales~~ *sale* contract or a lease contract entered into by
15 a buy-here-pay-here automobile dealer shall be subject to the
16 provisions referenced in Section 22250 of the Financial Code.

17 (c) Notwithstanding any other law, the annual percentage rate
18 charged to a buyer-borrower pursuant to a conditional-~~sales~~ *sale*
19 contract or lease contract with a buy-here-pay-here automobile
20 dealer shall not exceed the federal funds rate in effect at the time
21 the contract was executed plus an additional 17 percent.

22 18505. (a) In lieu of the notice required by subdivision (h) of
23 Section 2982 of the Civil Code, a conditional-~~sales~~ *sale* contract
24 or lease contract entered into by a buy-here-pay-here automobile
25 dealer shall include the following notice, in at least eight-point
26 boldface type:

27
28 “If you have a complaint concerning this buy-here-pay-here
29 automobile dealer or the contract, you should try to resolve it with
30 the dealer. Complaints concerning unfair or deceptive practices or
31 methods by the dealer may be referred to the city attorney, the
32 district attorney, an investigator for the Department of Motor
33 Vehicles, or an investigator for the Department of Corporations,
34 or any combination thereof.

35 After this contract is signed, the dealer may not change the
36 financing or payment terms unless you agree in writing to the
37 change. You do not have to agree to any change, and it is an unfair
38 or deceptive practice for the dealer to make a unilateral change.

39 I have read and understand the terms of this notice.

1
2 Borrower's Signature"

3
4 (b) The contract shall not be binding unless the buyer-borrower
5 has acknowledged in writing that he or she has read and
6 understands the notice required by subdivision (a).

7 18506. (a) A buy-here-pay-here automobile dealer shall be
8 prohibited from commencing repossession of a vehicle subject to
9 a conditional—~~sales~~ *sale* contract or lease contract due to the
10 buyer-borrower's failure to make a scheduled payment prior to
11 the 11th day following the date on which that payment was due.

12 (b) Following commencement of repossession proceedings
13 against a buyer-borrower for delinquent payments under a
14 conditional—~~sales~~ *sale* contract or lease contract, if the
15 buyer-borrower pays the delinquent amount in full, the
16 buyer-borrower shall be entitled for 45 days thereafter to pay the
17 buy-here-pay-here automobile dealer the amount of any
18 delinquency charges, penalty interest, and fees arising out of the
19 delinquency and commencement of repossession proceedings.

20 (c) A buy-here-pay-here automobile dealer shall not do either
21 of the following:

22 (1) Physically repossess a vehicle other than through engaging
23 the services of a licensed repossession agency.

24 (2) Charge a buyer-borrower an amount exceeding five hundred
25 dollars (\$500) in fees or charges resulting from the commencement
26 by the buy-here-pay-here automobile dealer of any action to
27 repossess a vehicle.

28 (d) The provisions of subdivisions (a), (b), and (c) shall be
29 included in the terms and conditions of a conditional—~~sales~~ *sale*
30 contract pursuant to Section 2981.9 of, or lease contract pursuant
31 to Section 2985.8 of, the Civil Code.

32 SEC. 2. Section 22054 of the Financial Code is amended to
33 read:

34 22054. Except as otherwise provided in Chapter 1b
35 (commencing with Section 18500) of Division 8 of the Business
36 and Professions Code, this division does not apply to bona fide
37 conditional contracts of sale involving the disposition of personal
38 property when these forms of sales agreements are not used for
39 the purpose of evading this division.

1 SEC. 3. (a) In enacting Section 1 of this act, it is not the intent
2 of the Legislature to affect or limit existing legal rights, remedies,
3 or claims available under current law.

4 (b) Any additional costs to the Department of Corporations
5 resulting from its administration of Section 1 of this act shall be
6 borne by buy-here-pay-here automobile dealers through fees
7 charged by the department, which fees shall not exceed the
8 reasonable regulatory costs of administering those provisions.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.